

### **REMARKS**

Claims 1-37 are all the claims presently pending in the application. Claims 27 and 32 have been amended for clarity.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 14-26 and 32 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite.

Claim 32 stands rejected under 35 U.S.C. §101 as allegedly directed toward non-statutory subject matter.

Claims 1-37 stand rejected under 35 U.S.C. § 102(a) as anticipated by Funderburk et al. (“XTABLES: Bridging Relational Technology and XML”). This rejection respectfully is traversed in the following discussion.

#### **I. THE CLAIMED INVENTION**

The claimed invention is directed to virtual resources developed independently of actual resources. The virtual resources are customized to a particular audience. The invention includes constructing at least one virtual resource independent of an actual resource, connecting the actual resource to the at least one virtual resource, retrieving the at least one virtual resource, and extracting at least one descriptor from the at least one retrieved virtual resource.

Funderburk et al. discloses a system referred to as “XTABLES.” XTABLES automatically maps the schema and data of an underlying relational database system to a low-level default XML view.

The claimed invention, on the other hand, provides a virtual resource that is constructed independently of any actual resource.

## II. THE INDEFINITENESS REJECTION

In paragraph 5, the Examiner alleges that claims 14-26 are indefinite because “... *the word “means” is preceded by the word(s) “comprises” in an attempt to use a “means” clause to recite a claim element as a means for performing a specified function.*” The Examiner continues: “*However since no function is specified by the word(s) preceding “means”, it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph.*”

In response, Applicant respectfully brings to the Examiner’s attention that means-plus-function terminology is established by use of “means” followed by functional language. Claim 14 follows this format and is, therefore, a completely correct means-plus-function claim.

Relative to claim 32, the four steps of the method are clearly specified by the clauses beginning by the words “constructing”, “connecting”, “performing”, and “extracting.” That is, contrary to the Examiner’s characterization, these four clauses are not “recitations of use.”

Relative to claim 27, although Applicant does not necessarily agree with the Examiner’s evaluation, this terminology has been amended in an effort to expedite prosecution.

In view of the above, Applicant respectfully requests that the Examiner reconsider and withdraw these rejections.

## III. THE STATUTORY SUBJECT MATTER REJECTION

Claim 32 stands rejected under 35 USC §101 as allegedly directed to non-statutory subject matter, since the Examiner considers that the description in the specification “... other suitable signal-bearing media including transmission media such as digital and analog and communication links and wireless ....” somehow converts this claim into non-statutory subject matter.

In response, Applicant first brings to the Examiner’s attention that the recited description from the specification relates to storage of computer instructions, which is clearly statutory subject matter if described in the form of a computer component, such as ROM or RAM. Moreover, based on *In re Beauregard*, 53 F.3d 1583 (1995), wherein the USPTO conceded “...

*that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. §101 and must be examined under 35 U.S.C. §§ 102 and 103.”*

US Patent 5,710,578 was subsequently issued on January 20, 1998, to Beauregard, et al. Therefore, computer instructions stored on a tangible media such as floppy diskettes are also patentable.

To the extent that the Examiner attempts to interpret the above-recited specification language as somehow converting the claim to become non-statutory, Applicant respectfully that this recitation includes the word “suitable”, thereby indicating that the remainder of the sentence has to be consistent with the purpose of storage of instructions. Therefore, this wording “... *signal-bearing media including transmission media such as digital and analog and communication links and wireless*” has to be interpreted in view of the context of storage of instructions.

Therefore, the terminology “... *including transmission media such as digital and analog*” can only mean storage of instructions as suitable for transmission, including either digital format or analog format. The wording “... *communication links and wireless*” can only be interpreted as directed to storage devices in communication links and wireless and would include, for example, memory devices in communication links and wireless devices. None of these exemplary embodiments is non-statutory.

Moreover, the claim has been amended to more clearly describe a tangible storage medium, thereby clearly precluding the Examiner’s interpretation.

In view of the above, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

#### **IV. THE PRIOR ART REJECTION**

The Examiner alleges that Funderburk et al. teaches the claimed invention. Applicant submits, however, that there are elements of the claimed invention which are neither taught nor suggested by Funderburk et al.

Funderburk et al. discloses XTABLES, a system that automatically maps the schema and data of an underlying relational database system to a low-level default XML view.

In contrast, the claimed invention constructs a virtual resource independent of an actual resource.

Therefore, even if everything else in the rejection of record were to be accepted as correctly characterized by the Examiner, this aspect of the claimed invention is clearly missing from Funderburk. Applicant has previously pointed out this deficiency of Funderburk on several occasions, but the Examiner seemingly simply intends to ignore this important distinction. In contrast to the claimed invention, Funderbunk views are dependent on relational data.

Independent claim 1 states: "... constructing at least one virtual resource independent of an actual resource ...." In an exemplary embodiment the XML meta-data describes actual resources (e.g., imagined or realized). The API is used to interrogate and manipulate the XML meta-data.

Thus, in the invention, logic authoring can proceed even if resources are not completely described, and even if an implementation does not yet exist. However, the implementation is preferably known at code generation/translation time (*e.g.*, see Figure 1). Conversely, direct referral to resources dictates that the actual resources must exist prior to logic authoring.

Applicant believes that a Funderbunk XML view cannot be created independent of "existing relational data." Funderbunk demonstrates the "Conversely" method acknowledged by our description.

Funderbunk clearly states: "One of the features provided by XTABLES is the ability to create XML views of existing relational data." This makes Funderbunk XML views dependent on the existence of existing relational data.

Hence, turning to the clear language of the claims, in Funderburk there is no teaching or suggestion of: "... constructing at least one virtual resource independent of an actual resource ....", as required by independent claim 1. The remaining independent claims have similar language or contain similar concepts. Therefore, all claims are clearly allowable over Funderburk

for this reason alone.

Applicant's previous comments concerning this rejection based on Funderburk remain valid but are not repeated, in order to preclude obscuring the significance of the distinction described above.

Therefore, Applicants submit that there clearly are elements of the claimed invention that are not taught or suggest by Funderburk et al., and the Examiner is respectfully requested to reconsider and withdraw this rejection.

## **V. FORMAL MATTERS AND CONCLUSION**

In view of the foregoing, Applicant submits that claims 1-37, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,



Date: September 11, 2008

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**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that I am filing this Amendment by EFS with the United States Patent and Trademark Office to Examiner Farhan M. Syed, Group Art Unit 2165 this 11<sup>th</sup> day of September, 2008.

A handwritten signature in black ink, reading "Frederick Cooperrider". The signature is fluid and cursive, with a long horizontal stroke at the end.

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